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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,557	11/22/2000	Mark Moriconi	PA1630US	5061

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EXAMINER

PYZOCHA, MICHAEL J

ART UNIT PAPER NUMBER

2137

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/721,557

Applicant(s)

MORICONI ET AL.

Examiner

Michael Pyzocha

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 57,58,63,64,72,73,81,82 and 90-95 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 57,58,63,64,72,73,81,82 and 90-95 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

1. Claims 57-58, 63-64, 72-73, 81-82 and 90-95 are pending.
2. Response the requirement for restriction has been received and considered.

***Election/Restrictions***

3. Claims 59-62, 65-68, 74-77 and 83-86 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 07/18/2005.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 91, 93, and 95 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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6. Claims 91, 93, and 95 recites the limitation "the user" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

8. Claims 57, 63, 72, 81, 90, 92, and 94 rejected under 35 U.S.C. 102(e) as being anticipated by Luckenbaugh (US 5991877).

As per claims 57, 63, 72, and 81, Luckenbaugh discloses a policy manager for managing a security policy and an application guard for managing access to securable components including at least one application as specified by the security policy (see column 4 line 58 through column 5 line 5 and the abstract).

As per claims 90, 92, and 94 Luckenbaugh discloses the application guard further allows for additional customized code to process and evaluate authorization requests based on the additional customized code (see column 8 lines 21-40).

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***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 58, 64, 73, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luckenbaugh.

As per claims 58, 64, 73, and 82, Luckenbaugh teaches managing access to portions of applications (see column 4 line 58 through column 5 line 5 and the abstract), but fails to disclose these portions being functions.

However, Official Notice is taken that at the time of the invention it would have been obvious to one of ordinary skill in the art for the portions of Luckenbaugh's application to be functions.

Motivation to do so would have been to that functions are self-contained software routines that perform a specific task.

11. Claims 91, 93, and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luckenbaugh as applied to claims 90,

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92, and 94 above, and further in view of Balassanian (US 6324685).

As claims 91, 93, and 95, Luckenbaugh fails to disclose the use of a global policy specifying access privileges.

However, Balassanian teaches such a global policy (see column 5 lines 54-65).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Balassanian's global policy as Luckenbaugh's policy.

Motivation to do so would have been that a uniform security policy could be implemented from a single machine (see Balassanian column 5 lines 54-65).

### ***Double Patenting***

12. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

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13. Claims 57-58 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 8 of copending Application No. 09767610. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 90-95 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of copending Application No. 09767610 in view of Luckenbaugh and Balassanian.

As per claims 90, 92, and 94 the copending application fails to disclose the application guard further allows for additional customized code to process and evaluate authorization

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requests based on the additional customized code. However, Luckenbaugh teaches this limitation (see column 8 lines 21-40).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Luckenbaugh's authorization with the copending application.

Motivation to do so would have been to only allow authorized users to access information.

As claims 91, 93, and 95, the copending application in view of Luckenbaugh fails to disclose the use of a global policy specifying access privileges.

However, Balassanian teaches such a global policy (see column 5 lines 54-65).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Balassanian's global policy as Luckenbaugh's policy.

Motivation to do so would have been that a uniform security policy could be implemented from a single machine (see Balassanian column 5 lines 54-65).

This is a provisional obviousness-type double patenting rejection.



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***Response to Arguments***

16. Applicant's arguments with respect to claims 57-58, 63-64, 72-73, 81-82 and 90-95 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Al-Ghosein et al (US 6473791), Nessellet et al (US 5968176), Schneider et al (US 6408336), Fox et al (US 20020002684) disclose policy managers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Pyzocha whose telephone number is (571) 272-3875. The examiner can normally be reached on 7:00am - 4:30pm first Fridays of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJP

A handwritten signature in black ink, reading "Andrew Caldwell". The signature is fluid and cursive, with the first name "Andrew" and last name "Caldwell" clearly distinguishable.

**ANDREW CALDWELL  
SUPERVISORY PATENT EXAMINER**